

Restorative Justice – time to take stock?

Robert Street argues that research and further examination is required to promote restorative justice.

Those with even a passing knowledge of restorative justice will know that it can hardly be described as a new development. Recent interest is often dated back to North America in the 1970s, although it was practised widely in many cultures thousands of years ago. But there is no doubt it has lately gained much currency in this country. Restorative justice has recently been discussed and supported in public statements by a series of senior figures in the criminal justice system, most notably the Lord Chief Justice. And of course restorative principles have been incorporated into recent youth justice legislation and into mainstream policing practices in Thames Valley.

While the meaning of the term restorative justice is understood in a general sense, in practice there are numerous definitions and views. Nevertheless its key values can probably be condensed to the following. Restorative justice is both a conceptual and practical approach to dealing with conflict. It is concerned primarily with repairing the harm caused by an offence. It is non-adjudicative, forward-looking, inclusive of those personally involved in the offence, and regards offences in their social context. At its core, restorative justice will involve a mediated meeting between victim and offender, perhaps also with family or other supporters present. In practice, however, many restorative justice interventions do not get to this stage.

Current interest in restorative justice is sustained not only by the promise of the principles it embodies, but also by dissatisfaction with aspects of our criminal justice system - in particular, feelings that the system currently treats victims poorly, and that offenders are not truly required to take responsibility for the consequences of their behaviour.

Given these problems it is understandable that we should look to alternative approaches which may remedy matters. Restorative justice has a solid grassroots base in this country and is now being adopted by some mainstream criminal justice agencies. But restorative justice is not and cannot be a uniform cure-all. If we are to make the most effective use of restorative justice, I believe we need further investigation, both empirical and theoretical, about the role it can play and about its strengths and weaknesses. Without this, the implications of restorative justice may not be clear for a wider audience. One result of this could be a confusing ambiguity: some North American writers (see Levrant *et al*, 1999, and Roach, 2000), have

commented on how the language of restorative justice is used in a variety of contexts, not always appropriately, and how its principles and aims are employed by both liberals and conservatives alike in debates about crime and punishment.

So we need to do more work in defining the details of restorative justice. Any further exploration of this nature should at the very least include the following topics.

The scope of restorative justice

Restorative justice will always be limited in the cases to which it can be applied. Its voluntary nature suggests that both victims and offenders must agree to participate - which in the offender's case entails admitting the offence in question. To date, restorative justice has been applied mostly to less serious types of offences, often in a diversionary context although many believe that there is no reason in principle that restorative justice could not be applied to more serious offences. Possible limits to its application are also suggested by existing research into participation rates. While some restorative justice schemes in Australia and North America have reported very high participation rates, in other situations - and often in the UK - participation rates, particularly among victims, have been lower. Consequently, a significant minority of all cases referred to many restorative justice schemes never result in any restorative action because either offenders or (more commonly) victims are unwilling to take part. That said, the experience in New Zealand suggests that participation rates can be improved from initially low levels.

The relationship between conventional criminal justice and restorative justice

We need to consider this relationship further. Are these two approaches best kept as separate elements in our response to offending behaviour, or can they be blended together? To keep restorative justice separate from mainstream criminal justice responses may help preserve the integrity of its aims but could leave it marginalised. But to incorporate it fully may dilute its approach too far and subsume its values within those of the conventional justice system.

In particular, we need to consider the link between restorative justice and the traditional aims of the criminal justice process. For example, restorative justice is non-punitive in its aims. But arguably



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anything which deprives an offender of time or money, let alone places him/her in a position of personal discomfit – as meeting a victim, or undertaking any agreed restorative action will surely do – constitutes punishment, even if not intended as such. But is this a widely held view, and is it appropriate? On the face of things, retributive justice and restorative justice seem far apart but some suggest that there are in fact marked similarities between the two, both being based on notions of individual responsibility and autonomy. Yet restorative justice is frequently criticised for paying insufficient attention to proportionality and other due process concerns that underpin retributive, desert-based concepts of justice.

Similarly we might want to consider further the relationship between restorative justice and the rehabilitation and treatment of offenders under the resurgent 'What Works' banner. Offenders taking part in restorative justice may well have needs or problems that require addressing – can the restorative justice process do that satisfactorily? If it can, would this make restorative justice susceptible to being labelled as too offender-focused, antithetical to its role in representing the views of victims?

Restorative justice and outcomes

Lastly, more debate is needed about what outcomes restorative justice should be seeking to achieve and by which it should be judged. Impact on reoffending is increasingly the dominant standard by which any criminal justice intervention is judged. Should this be the case with restorative justice? Research into restorative justice has been criticised for a lack of rigour in looking at reoffending, yet there is a growing body of evidence suggesting that it can reduce reoffending in some circumstances – but more information is needed on this from the UK experience.

Advocates of restorative justice might argue with some justification that provided it does not increase reoffending – and there is no real evidence suggesting that it does – the other benefits it brings are sufficient to justify its wider adoption. Certainly, the research data on participants' feelings of fairness and satisfaction seem unequivocal: those who take part in

restorative justice tend to report satisfaction both with the outcomes and the process itself.

What I have written here is not new. Those familiar with the subject will know that I have essentially restated in simplified terms the work of many writers in this area, such as Braithwaite (1999), Dignan (2000), and Wright (1999). But as restorative justice increasingly comes to the attention of a wider audience, both within and without the criminal justice system, the need to explain what it involves and to question what it means in practice becomes more pressing. Some work of this nature is already underway – such as the Home Office and Youth Justice Board's current research into restorative justice, and the Esmée Fairbairn

Foundation's 'Rethinking Crime and Punishment' project. Nor should developments in restorative justice be halted while we await results of such investigations – we need the examples of restorative justice in practice to fuel discussions. But in the longer term, research and debate are needed to inform the future direction of restorative justice.

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